

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 22-CR-106(LDH)
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:
-against- : United States Courthouse
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:
:
JONATHAN GOULBOURNE, : Friday, June 14, 2024
:
12:00 p.m.
Defendant. :
:
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE LASHANN DEARCY HALL
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 (Defendant enters the courtroom at 12:27 p.m.)

3 COURTROOM DEPUTY: Good afternoon. This is a
4 criminal cause for a sentencing in the matter of
5 United States v. Jonathan Goulbourne. Docket No. 22-CR-106.
6 Counsel state your appearances for the record.

7 MS. MCGRATH: Tara McGrath and Rebecca Schuman for
8 the Government. And we are joined at counsel's table by
9 Probation Officer Michelle Malko.

10 THE COURT: Good afternoon to you.

11 MR. BIALE: Noam Biale and Martin Njorge on behalf
12 of Mr. Goulbourne who is standing to my right. And I want
13 to acknowledge we had some introductions of folks in the
14 gallery. But since then, we've been joined by
15 Mr. Goulbourne's son Jamari Goulbourne.

16 THE COURT: Good afternoon to you all. You all
17 may be seated.

18 All right, folks, we are here today for a
19 sentencing determination on the superseding indictment
20 against the defendant Mr. Jonathan Goulbourne.

21 Now, present today are counsel for both the
22 Government and the defendant. The defendant,
23 Mr. Goulbourne, of course, and a representative from the
24 probation department, each of whom have noted their
25 appearance for the record.

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1 Now, on December 21st of 2023, Mr. Goulbourne
2 pleaded guilty to Count Fourteen of the superseding
3 indictment filed on June 15, 2022.

4 Now, Count Fourteen charges that on or about
5 February 10, 2022, within the Eastern District of New York
6 and elsewhere, the defendant Jonathan Goulbourne also known
7 as "Bobcat" did knowingly, intentionally, and corruptly, A,
8 alter, destroy, mutilate, and conceal one or more records,
9 documents, and other objects to wit: A cellular telephone
10 with international mobile equipment identity numbers
11 354660119232414 and the files contained therein and attempt
12 to do so with intent to impair such item's integrity and
13 availability for use in an official proceeding to wit: A
14 proceeding before a federal grand jury in the Eastern
15 District of New York relating to the commission and possible
16 commission one or more robbery, drug, and firearm offenses.

17 And B, obstruct, influence, and impede an official
18 proceeding to wit: The grand jury investigation and attempt
19 to do so in violation of 18 U.S.C. Sections 1512(c)(1) and
20 (c)(2).

21 Now, the Court found that Mr. Goulbourne made his
22 plea knowingly and voluntarily and that there was a factual
23 basis for Mr. Goulbourne's plea. Accordingly, the Court
24 accepted Mr. Goulbourne's plea of guilty on January 9th of
25 2024.

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1 Now, in advance of this proceeding, I received and
2 I reviewed a February 10, 2022, second amended complaint and
3 affidavit in support of arrest; a June 15, 2022, superseding
4 indictment; a May 10, 2024, presentence investigation
5 report; a June 2, 2024, sentencing memorandum by the
6 Government; a June 7, 2024, addendum to the presentence
7 investigation report; and a June 7th sentencing memorandum
8 by the defendant as well as a June 13, 2024 supplement to
9 the sentencing memorandum filed by the defendant.

10 In addition, moments ago, the Court received from
11 the Government some additional materials that appear to be
12 medical records. I have not had an opportunity to review
13 these records at all. There are two flags, but I have no
14 doubt that the Government will indicate the import of these
15 documents as we move along.

16 Does the Government have any additional materials
17 they'd like to put before the Court at this time?

18 MS. MCGRATH: No, your Honor.

19 THE COURT: Mr. Biale, do you have any other
20 documents or submissions for the Court?

21 MR. BIALE: So, your Honor, there is one thing
22 left off the list which was a June 9th, I believe,
23 supplemental letter from Mr. Goulbourne's sister Geneva
24 which I just received after filing the sentencing
25 submission.

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1 THE COURT: Do you have a copy of it on hand?

2 MR. BIALE: Yes.

3 THE COURT: It was attached to -- hold on, let me
4 just make sure.

5 One moment, please.

6 To the Government, do you have any witnesses
7 present in the courtroom today?

8 MS. MCGRATH: No, your Honor.

9 THE COURT: Now, we had at one time anticipated
10 holding an Fatico hearing. My understanding is that the
11 bases for that Fatico hearing, which was the objection by
12 Mr. Goulbourne, has been withdrawn and we are moving forward
13 without the Fatico hearing. So the Court will accept the
14 factual allegation as asserted in the complaint with respect
15 to Paragraph 4 and the gun as it's set out in the PSR; is
16 that correct?

17 MR. BIALE: That's correct.

18 THE COURT: Okay.

19 MR. BIALE: Your Honor, just one other
20 housekeeping matter.

21 Regarding the letter that I filed on June 13th
22 about the recent events at the MDC.

23 THE COURT: Yes.

24 MR. BIALE: So I have learned, since I filed that
25 letter, that the individual who had a heart attack was

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1 thought to have died but actually is in critical condition
2 but still alive. The individual who was stabbed did pass
3 away but I just wanted to --

4 THE COURT: Clarify.

5 MR. BIALE: -- clarify that.

6 THE COURT: Okay. Thank you.

7 MR. BIALE: And, your Honor, Mr. Goulbourne just
8 informed me that the individual who was stabbed to death is
9 his friend's son who he knows well. He grew up with this
10 individual's father, and so, he knows the victim of that
11 incident.

12 THE COURT: I'm sorry for your loss,
13 Mr. Goulbourne.

14 Now, Mr. Biale, have you and Mr. Goulbourne had an
15 opportunity to read and discuss the presentence report?

16 MR. BIALE: We have.

17 THE COURT: And you've discussed the objections
18 that were raised to the presentence report both in your
19 submission to the Court and to the probation department?

20 MR. BIALE: Yes, your Honor.

21 THE COURT: Do you have any witnesses that are
22 present here today?

23 MR. BIALE: No.

24 THE COURT: And I am correct that with respect to
25 paragraph -- having resolved the objection, in effect, you

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1 are withdrawing it with respect to Paragraph 4. There's no
2 need for a Fatico hearing in this case?

3 MR. BIALE: Correct, your Honor.

4 THE COURT: Now, beyond Mr. Goulbourne who, of
5 course, will have an opportunity to address this Court, will
6 there be anyone that will be making a statement today?

7 MR. BIALE: No, we just ask the Court, and I know
8 you have, to take the letters on behalf of Mr. Goulbourne's
9 supporters as those statements.

10 THE COURT: Yes, I have and I will.

11 Let me talk about the maximum sentence available.

12 So with respect to Count Fourteen, the maximum
13 term of imprisonment is 20 years. For Count Fourteen, the
14 Court may impose a supervised release of not more than three
15 years. Because Count Fourteen is a Class C Felony, the
16 defendant is eligible for not less than one, nor more than
17 five years of probation. However, one of the following must
18 be imposed as a condition of probation unless extraordinary
19 circumstances exist and that includes a fine, restitution,
20 communicate service.

21 Now, the maximum fine is \$250,000. The Court must
22 impose a \$100 mandatory special assessment. Now, based on
23 the count of conviction, restitution is not applicable here.
24 However, there is forfeiture that is set out in the plea
25 agreement which the Court will order accordingly.

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1 Now, the PSR calculates an effective guideline
2 range of 78 to 97 months' imprisonment and a total offense
3 level of 27 and a Criminal History Category of II.

4 There are some objections to the PSR, though, none
5 to the guideline ranges as set out in the PSR, correct?

6 MS. MCGRATH: Yes, your Honor.

7 THE COURT: So I'm going to walk through some of
8 these objections and I'm using the addendum to the
9 presentence report as a reference point if you all want to
10 follow along with me.

11 Mr. Biale, you have raised an objection to the use
12 of the phrase "crew" in that sentence, though, you don't
13 dispute his participation in the robberies with the make-up
14 of individuals that pretty much overlap at least amongst the
15 various robberies.

16 Tell me the basis for the objection.

17 MR. BIALE: Your Honor, I think --

18 THE COURT: Because you know I know what a crew
19 is, I mean, let me just --

20 MR. BIALE: Yes, I know. And I think I have a
21 good sense for the Court's eye rolling every time I say it.

22 I mean, look, this is, I think, it's a
23 characterization of the Government. We think that the
24 paragraph would more accurately read, it lists the people
25 and could just say "Committed robberies between June 2020

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1 and December 2021." It's over my objection.

2 THE COURT: I don't have a problem taking that
3 word out because it doesn't really matter. Because, at the
4 end of the day, I know what a crew is.

5 MR. BIALE: Fair enough.

6 THE COURT: We'll amend the PSR.

7 The objection to Paragraph 4 has been withdrawn.

8 I was a bit perplexed about the objection to
9 Paragraph 5. I didn't see the issue that you raised but am
10 I missing it?

11 MR. BIALE: That was just to provide additional
12 context, your Honor. I don't think -- I think I hear what
13 the probation department is saying that, as written, it's
14 accurate, I don't think we need to amend it.

15 THE COURT: So are you withdrawing it or should I
16 overrule it?

17 MR. BIALE: It's up to you.

18 THE COURT: I'll overrule it.

19 MR. BIALE: Okay.

20 THE COURT: Now, you argue, as an objection to
21 Paragraph 6, that he did not negotiate the marijuana sale.
22 It was just negotiated by someone on his phone, but it seems
23 to me that a reasonable inference is that it was done on his
24 phone and, therefore, the negotiation that took place was
25 done by him. I'm allowed to draw reasonable inferences. I

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1 don't have a basis to draw any other one.

2 MR. BIALE: I can explain a little bit of the
3 basis.

4 I don't think that this necessarily affects the
5 sentencing, I think it's a minor point. But it's, you know,
6 we raised it just because that particular assertion is
7 factually inaccurate in our view. The text messages that
8 were exchanged between the victim in this case, Mr. Baratta,
9 and the phone in question involved -- Mr. Baratta texted the
10 phone, Mr. Goulbourne responded whose question mark by which
11 he meant, Who is this? Mr. Baratta responded, in sum and
12 substance, I thought this was the short man, which is a
13 reference to a different person. And then said, this is
14 G, Victor's boy, we're looking to make a move and
15 Mr. Goulbourne never responded to those text messages.

16 So I agree various inferences can be drawn from
17 that. This issue came up in our briefing on the motion to
18 suppress because the inference that the Government drew we
19 thought left out, or that the agents drew in that case, we
20 thought left out some of the important context of what
21 Mr. Goulbourne said and did not say in response to the text
22 messages.

23 So I lay that all out just to explain the basis
24 for the objection. Again, I don't know that it is going to
25 affect your Honor's sentence, but I did want to make that

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1 all clear for the record.

2 THE COURT: I'm going to overrule the objection.

3 Here, again, so with respect to Paragraph 13, what
4 you want is for the Court to note that he voluntarily
5 admitted to the agents that he deleted everything. And the
6 Government's response to that is, while he provided the
7 information, he only did so upon the questioning by law
8 enforcement officers. And so, what does voluntary mean in
9 that circumstance if it only happened in response to
10 questioning? It is not as if he deleted the information.
11 They then walked in and he said, Oh, my God you know what I
12 just did and I should not have done, I deleted my phone.

13 MR. BIALE: So that's correct, your Honor. And I
14 can just read to you from the discussion just you have a
15 full record on it but I understand your Honor's point.

16 So the agents were asking him about the phone,
17 they asked him about the number. He said I don't know the
18 numbers off my head. Agent Duane asked him, and I'm quoting
19 from this transcript, Would you allow us to look at that
20 phone or this phone. Would you allow us to look at this
21 phone? Mr. Goulbourne said, Why? Agent Duane said, To see
22 if we can find Mark's stuff on there. Do you think there's
23 any text messages he may have left? Mr. Goulbourne said, I
24 got so nervous I don't know what y'all did and I deleted
25 everything from the house.

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1 The agents asked when and what did he mean?
2 Mr. Goulbourne said, this morning, there is nothing in that
3 phone. They said what do you mean, when did you delete it?
4 He said today. There was some confusion. Initially, they
5 asked, before we arrested you? And he said yes. Then he
6 clarified no, no, no this morning right here. Check the
7 cameras, man. Agent Livingston said, What, sitting in this
8 courtroom and Mr. Goulbourne said of course.

9 THE COURT: Can I read it myself?

10 MR. BIALE: Yes.

11 (A brief pause in the proceedings was held.)

12 THE COURT: How long have they been at this
13 point -- how much time had transpired between the time that
14 he deleted the phone and this exchange?

15 MS. MCGRATH: Approximately an hour, your Honor.

16 MR. BIALE: I'm not sure. I don't recall exactly.

17 There is a period where he's alone in the room
18 with the phone and I can't remember. And I think he's left
19 alone at some point again in the middle and I can't remember
20 in which time he deletes the phone.

21 THE COURT: Give me a moment.

22 Paragraph 13 indicates, and I don't think that
23 this part you objected to, is that when it was -- when he
24 was confronted, he claimed that he was deleting lewd photos.
25 And you made reference to that in your written submission.

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1 By the way, okay, but, you know?

2 So that seems to be the bigger issue, and the fact
3 that that's what he offered up that I was deleting lewd
4 photos, in my mind, undermines the notion of any
5 voluntariness of the statement regarding the deletion.

6 MR. BIALE: So, your Honor, I understand the
7 ruling.

8 THE COURT: Yes.

9 MR. BIALE: I was pointing to the fact that before
10 that he said, I deleted everything from the phone.

11 THE COURT: No, I get it. The passage of time
12 coupled with the representations by him that he was deleting
13 lewd photos, I'm just not going to give him the
14 voluntariness.

15 By the way, it also doesn't say that he lied that
16 he hadn't deleted either. So it's kind of a neutral
17 paragraph when it comes to whether it was voluntary or not.
18 It just kind of identifies what occurred and I think that
19 that's sufficient for it to be accurate.

20 As you can imagine, the Court is not intending to
21 supplement the PSR with kind of Mr. Goulbourne's version of
22 the events that transpired between him and Mr. Louis;
23 however, the probation department has indicated that they
24 believe, and I believe, it's an appropriate amendment to
25 amend the paragraphs to indicate that they stem from

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1 domestic issues. You did see that in the addendum, all
2 right? So the PSR is amended to do so.

3 And I believe the clarification raised by the
4 defense with respect to Paragraph 39 to identify that it was
5 a Leatherman working tool, the probation department has
6 already amended the PSR to reflect that change.

7 Now, the firearms at Paragraph 40. It seems to me
8 that when you go to Paragraph 40 of the PSR, at the top of
9 Page 11, it says, according to the N.Y.P.D. arrest report
10 and Court records on August 11th, it says, In front of 1331.
11 And your position is he didn't have it on his person but
12 they were in the house.

13 MR. BIALE: Correct.

14 And, your Honor, I think, according to the
15 addendum, the additions that I suggested are noted which I
16 think is sufficient.

17 THE COURT: Okay. Good.

18 Now, Paragraphs 55, 57, and 61 were amended. I'm
19 assuming, Mr. Biale, that those amendments satisfy you and
20 the Government has made no objections there.

21 MR. BIALE: Yes, your Honor.

22 THE COURT: Because they've incorporated your
23 objection.

24 MR. BIALE: Yes.

25 THE COURT: Okay, good.

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1 I think 85 is again it's just a recommendation by
2 the probation department, it's not a statement of fact it's
3 their opinion. So I think the Government's position on that
4 is correct.

5 MR. BIALE: I always object to it, your Honor.

6 THE COURT: The Government has proposed amendments
7 to Paragraphs 11 to correct the identities of the respective
8 victims and also wanted to make a correction which is why I
9 think the documentation that you sent me today concerning
10 Mr. Goulbourne's medical condition as opposed to a burst
11 appendix was a dilated appendix.

12 MR. BIALE: So, on that front, your Honor, and I
13 know this is going to be the subject of a --

14 THE COURT: Evidentiary hearing.

15 MR. BIALE: Yes.

16 So I spoke about this with Ms. McGrath. The
17 record that we have that indicates to us that the appendix
18 ruptured came from the Brooklyn Hospital Center. So it
19 appears that the rupture occurred in between the time that
20 he was at NYU Langone and the Brooklyn Hospital Center.

21 So what we proposed is because the way that the
22 paragraph in the PSR reads is -- this is 58. It says,
23 "According to the docket entries," and goes on to describe
24 some of the filings. And what I proposed to Ms. McGrath is
25 what we simply do just to clarify the paragraph is that

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1 Line 3, the defendant was taken to NYU Langone's Brooklyn
2 emergency room, cut the rest of the sentence, and then say
3 he was then transferred to the Brooklyn Hospital Center
4 where he underwent a laparoscopic appendectomy.

5 Rather than having us try to interpret the medical
6 records, I think my reading of it is that he arrived at
7 Langone with a dilated appendix, it ruptured at some point.
8 When they performed the surgery at Brooklyn Hospital Center,
9 it had ruptured. But I don't know that, again, it matters
10 so much for today's purposes and I think that that change to
11 Paragraph 58 would simply take out the ambiguity.

12 MS. MCGRATH: And we concur with that proposed
13 amendment.

14 THE COURT: So the clause where he was diagnosed
15 with the ruptured appendix will be deleted from the PSR.

16 I think with that all of the objections have been
17 resolved, am I correct?

18 MR. BIALE: Yes, your Honor.

19 MS. MCGRATH: Yes, your Honor.

20 THE COURT: The Court adopts the PSR as modified
21 on the record. And, of course, by the probation department
22 in its addenda.

23 I'll now calculate the sentencing guidelines
24 guideline range as to Mr. Goulbourne's offense.

25 The guideline for this offense is the Sentencing

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1 Guideline Section 2J1.2. And pursuant to Sentencing
2 Guideline Section 2J1.2(c)(1). Because the offense involved
3 obstructing the investigation or prosecution of a criminal
4 offense, Sentencing Guideline Section 2X3.1 is used to
5 determine the offense level.

6 Pursuant to Sentencing Guideline
7 Section 2X3.1(a)(3)(A), the base offense level here is 30.
8 Mr. Goulbourne has clearly demonstrated an acceptance of
9 responsibility for the offense. Accordingly, the offense
10 level is decreased by two levels bringing the offense level
11 to 28.

12 I also understand that the Government intends to
13 make a motion indicating that it was notified in a timely
14 matter of Mr. Goulbourne's intention to enter a plea of
15 guilty.

16 Is that correct.

17 MS. MCGRATH: Yes, your Honor.

18 THE COURT: The Government's motion is granted.
19 The offense level is decreased by an additional point
20 pursuant to Sentencing Guideline Section 3E1.1(b) which
21 brings the offense level down to 27. Of course, the Court
22 must take into account Mr. Goulbourne's criminal history in
23 calculating a guideline range.

24 Now, as to Mr. Goulbourne's criminal history, the
25 Court calculates a total criminal history score of three.

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1 Now, according to the sentencing table at
2 Chapter 5 of the Sentencing Guidelines Part A, a criminal
3 history score of three establishes a Criminal History
4 Category of II.

5 Now, based on a total offense level of 27 and a
6 Criminal History Category of II, the guideline range for
7 imprisonment here is 78 to 97 months.

8 Now, because Count Fourteen is a Class C Felony,
9 the guideline range term for supervised release is one to
10 three years.

11 Now, because the applicable guideline range is in
12 Zone D of the sentencing table, Mr. Goulbourne is ineligible
13 for probation. The fine range here is 30,000 to \$250,000.

14 Are there any objections, folks, to the Court's
15 calculation of the guidelines range?

16 MS. MCGRATH: No, your Honor.

17 MR. BIALE: No, your Honor.

18 THE COURT: At this time, I want to hear from the
19 parties regarding any departures. You'll save your
20 arguments for a variance for later.

21 Any arguments on departures?

22 MS. MCGRATH: The Government doesn't have any.

23 We believe that the PSR accurately states that
24 under 5K2.2 that there could be a departure and we have no
25 argument for one here.

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1 THE COURT: What, I'm sorry. You believe
2 that -- do you believe an upward departure is warranted --

3 MS. MCGRATH: No.

4 THE COURT: -- or no departure?

5 MS. MCGRATH: No, your Honor.

6 THE COURT: Then I think I misread your
7 submission. I thought you were advancing an argument for an
8 upward departure.

9 MS. MCGRATH: We're asking the Court to vary
10 upwards.

11 THE COURT: To vary, not depart?

12 MS. MCGRATH: We concur with your guidelines
13 calculation. And we concur that Paragraph 85 of the PSR
14 accurately states that under 5K2 that there could be a
15 departure. We're are arguing an above-guideline sentence
16 based on a variance.

17 THE COURT: A variance, not the 5K2. Okay. All
18 right.

19 Any departure arguments?

20 MR. BIALE: No. My position on the 5K2 point is
21 set forth in my sentencing submission.

22 THE COURT: Yes.

23 Having calculated the guidelines and the Court has
24 considered the arguments, or at least the assertion
25 advanced, rather, in the PSR concerning a departure, I must

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1 also consider the relevant factors set out by Congress in
2 18 U.S.C. Section 3553(a) to ensure that I impose a sentence
3 that is sufficient but not greater than necessary to comply
4 with the purposes of sentencing.

5 Now, these purposes include the need for the
6 sentence to reflect the seriousness of the crime, promote
7 respect for the law, and to provide just punishment for the
8 offense. The sentence should also deter criminal conduct,
9 protect the public from future crime by the defendant, and
10 promote rehabilitation.

11 In addition to the guidelines and the policy
12 statements, I must consider the nature and the circumstances
13 of the offense, the history and the characteristics of the
14 defendant, the need to avoid unwarranted sentence
15 disparities among similarly situated defendants, the types
16 of sentences available, and the need to provide restitution
17 to victims of the offense.

18 Does the Government wish to make any arguments
19 about the application of the §3553(a) factors, request a
20 variance, or otherwise make a sentencing recommendation?

21 MS. MCGRATH: Yes, your Honor.

22 THE COURT: I'll hear from you now.

23 MS. MCGRATH: So we won't belabor the points in
24 our own submission but do want to respond to some of the
25 arguments raised by defense counsel in his.

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1 And one his central arguments seems to be that
2 this defendant was primarily a getaway driver, he wasn't
3 involved in violence and he wasn't directly involved with
4 the victims and that's flatly belied by the evidence. He
5 was an integral member of this crew and he participated in
6 three of the charged robberies. These were not crimes of
7 opportunity, they were thoughtfully planned. The location
8 is thoughtfully planned; the victims was chosen; the
9 manpower was gathered; the cars they would use; and the guns
10 they would carry. And the defendant was involved in all of
11 that.

12 For the Bronx robbery in July of 2020, the
13 defendant personally held the victim at gunpoint in broad
14 daylight. For the Staten Island robbery in October 2021, he
15 secured and delivered the car they used to transport almost
16 one hundred pounds of marijuana. And that victim was held
17 at gunpoint and threatened with death by a co-conspirator.
18 And for the Brooklyn robbery and homicide in 2021, the
19 defendant located and lured the victim Gregory Baratta. He
20 supported a show-and-tell for marijuana in Queens. And he
21 brought his brother, one of the shooters, to the robbery and
22 he provided a quick means of escape after the murder.

23 And what's notable here is not only did the
24 defendant transport his brother away, but then moments
25 later, he reversed back up the street at a high rate of

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1 street which let his brother run back into the house with a
2 gun in hand. And what his brother would have seen was
3 Gregory Baratta lying on the floor, riddled with bullets,
4 unconscious. There was a pure getaway driver, it wasn't the
5 defendant.

6 When he was finally caught he continued being an
7 integral member to the crew's success he deleted the
8 contents of his phone and instrumentality of these crimes
9 which contained evidence of these crimes.

10 And as your Honor will know, these are crimes with
11 real victims. Individuals who were held at gunpoint,
12 threatened with death, and then who lost their father, their
13 son, their husband, Gregory Baratta.

14 So for those reasons, certainly, any suggestion
15 that a sentence of time served of 28 months would be
16 appropriate given the seriousness of the offense, the need
17 for just punishment and specific deterrence is entirely
18 inconsistent with the factual record.

19 Defense counsel notes that the guidelines range
20 here contemplates the conduct at issue, and so, a sentence
21 even within the guidelines may be appropriate. Of course,
22 we're asking for a variance above the guidelines. But we'll
23 just note that the guidelines don't contemplate all the
24 conduct here. So the defendant is charged with obstruction
25 of justice involving murder. The guidelines don't

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1 contemplate that he was involved in the underlying robbery
2 and drug trafficking conspiracy that led to that murder.
3 And they certainly don't contemplate that he was involved in
4 two other gunpoint robberies. And this defendant himself is
5 charged with two §924(c)'s. He's charged with banishing a
6 gun in the July 2020 robbery and he's charged with a
7 discharge of a gun in connection with the Brooklyn robbery
8 and homicide for aiding and abetting his brother who was
9 transported to and from the robbery with a gun in hand.

10 Defense counsel also notes that this defendant is
11 at the relatively low end of culpability and that's simply
12 not true. The only defendants who more culpable than him
13 are the triggermen who killed Gregory Baratta. He is only
14 one of two defendants charged in all three robberies. And
15 he's only one of three defendants charged with two 924(c)'s
16 for his involvement in aiding and abetting of the gun
17 charges.

18 Importantly, this Court already sentenced one of
19 the defendant's co-conspirators, Amari Webber. And there
20 are number of similarities amongst those defendants. In
21 fact, many of the mitigating circumstances defense counsel
22 has raised is present in both those cases.

23 So Mr. Webber was gainfully employed; in fact, he
24 ws gainfully employed part-time even while in high school.
25 He was much younger than the defendant and he had a very

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1 limited criminal history. He was also a father of two
2 children who he supported. And he was at the MDC under
3 separation requests.

4 What separates the two of them is that this
5 defendant was involved in three of the armed robberies.
6 This defendant personally brandished a gun. And this
7 defendant brought his brother back to the scene after the
8 shooting where he could again terrorize that family by
9 bringing a gun in.

10 The only additional mitigating circumstance
11 between the two is that this defendant suffered medical
12 complications while at the MDC which the Government agrees
13 is an appropriate consideration under the Section 3553(a)
14 factors and has also factored into its own sentencing
15 recommendation.

16 THE COURT: I will say that it is interesting to
17 me just as the Court is in the role of having to decide an
18 appropriate sentence and weighing, as I do, the relevant or
19 respective culpability, rather, of each defendant. The
20 Government made a determination to proceed with Mr. Webber
21 on charges that resulted, I believe, in a guidelines range
22 of 292 to 360-some-odd months. And yet, this gentleman
23 here, whom you've described in a manner that you could say,
24 makes him at least sound as if the Government believes he's
25 more culpable but you pleaded him to a charge that carries

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1 with it a guidelines range that's considerably less and
2 would require the Court to vary upward. It's just -- and I
3 can't intrude on, you know, decisions that are made with
4 respect to the plea, but I can't help but note it, right?
5 Because sometimes it does feel as if the Government is
6 asking of the Court to carry its water.

7 MS. MCGRATH: So, certainly, your Honor, the
8 guidelines calculations for the two differ. Both counts
9 carry a statutory maximum of 20 years. A lot of factors
10 went into what would be an appropriate --

11 THE COURT: I'm not asking to intrude, it was
12 really just commentary that I wanted to make.

13 MS. MCGRATH: Understood.

14 THE COURT: The last point of it being the most
15 important, that it seems as if in some respects that the
16 Government asked the Court to carry its water but go ahead.

17 MS. MCGRATH: Understood, your Honor.

18 So, for all those reasons, given the seriousness
19 of the defendant's involvement in these crimes, the many
20 crimes he perpetrated, and the victims that were left in
21 their wake, the Government does believe that an
22 above-guideline sentence is appropriate here in the range of
23 108 to 135 months.

24 THE COURT: All right. Thank you.

25 Mr. Biale.

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1 MR. BIALE: Thank you, your Honor.

2 So let me start out by contextualizing our ask a
3 little bit.

4 THE COURT: Because it is an ask that is begging
5 for context.

6 MR. BIALE: Well, that's why I wanted to start
7 there, your Honor. And the reason it needs to be
8 contextualized is because stripped of some of the context
9 here, the request for a sentence of 28 months given, the
10 seriousness of the offense as Ms. McGrath described it does
11 seem incommensurate and we recognize that. But there is
12 important context here and I want you to understand why we
13 made that request.

14 So we take the guidelines for this offense as they
15 are. It's 78 to 97 months. I have thought through sort of
16 what would be an appropriate variance downward from that
17 guidelines range. And the fact that Mr. Goulbourne has been
18 incarcerated at the MDC under the conditions he's been in, I
19 think gives the basis -- so we provided to the Court,
20 there's a lot of judges in this district and the Southern
21 District, that have sorted treated as two-for-one credit the
22 time that people have spent in the MDC.

23 As I indicated in the submission, 28 months is
24 equivalent to a sentence of 33 months, approximately, when
25 you factor in good time. So that's the sentence that

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1 Mr. Goulbourne has done already. If we are giving him
2 double credit for the time that he spent in the MDC --

3 THE COURT: He doesn't get double credit for the
4 good time. No, if you're going to do the math you got to do
5 the math right.

6 So let's start with the 28. You can't double
7 credit the 33, you see that?

8 MR. BIALE: I don't think we end up in such a
9 different place and I did crunch these numbers earlier
10 because I thought you might say that.

11 THE COURT: He didn't serve those extra few months
12 in the MDC, that's the good time credit, so it doesn't work.

13 MR. BIALE: So let's take 28 times two and I'm
14 going to -- I may mess this up.

15 THE COURT: 56. Did I get that right?

16 MR. BIALE: 56, let's take 56, okay?

17 So that is if we're treating each day that he
18 spent in the MDC as essentially two days equivalent to what
19 it would be in a humane system that we all think that we
20 ought to have, he's done 56 months. If you add the good
21 time credit on to that, just to give the Court the number,
22 that gives us a little over 64 months as the sentence.
23 Okay?

24 So what I am asking for is a variance downward
25 from the bottom of the guidelines range, but not such a

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1 dramatic downward variance as it would appear to go from 78
2 to 28. I think the appropriate way to think about it really
3 is going from 78 to 64.

4 THE COURT: That's if you assume that based on the
5 facts and circumstances of this case that the Court believes
6 that the bottom of the guidelines range is the appropriate
7 starting point.

8 MR. BIALE: Understood, your Honor.

9 THE COURT: And I don't.

10 MR. BIALE: Okay, understood.

11 THE COURT: Listen, I can't disagree with anything
12 that the Government set out with respect to how I should
13 view Mr. Goulbourne's role in this case. I scribbled as the
14 Government was talking. He was charged -- and I get, you
15 know, I made my comment about carrying the Government's
16 water because of the way in which this was pleaded
17 ultimately. But nonetheless, he was charged in the three
18 charged robberies. He did have a role in the planning. He
19 did physically put a gun, I don't know if I would say to the
20 head because I can't remember that specifically, but he
21 certainly put a, you know, pointed a gun at the victim of
22 one of the robberies himself.

23 His role as, you know, a getaway driver, I do
24 think kind of understates what he did here. Taking his
25 brother back where his brother then went back into the

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1 residence with a gun in hand. I'm not certain what to
2 accomplish at that point given what had already transpired,
3 but nonetheless brought him back. The deleting the contents
4 of his phone was just the culmination of all of the conduct
5 that he had engaged in. It wasn't the definition of the
6 conduct that he had engaged in.

7 And this is a case where there's no question that
8 Mr. Goulbourne was aware that this sort of violence was
9 likely. He, himself, carried a gun on one of the robberies.
10 He knew that all of his cohorts were carrying guns. This is
11 exactly the type of violence that they contemplated and
12 prepared for. I don't know how I could ignore all of those
13 facts.

14 I have great sympathy for Mr. Goulbourne and what
15 he has had to endure at the MDC and I promise, I need you to
16 step out of the way.

17 Mr. Goulbourne, I promise you, I'm going to take
18 that into account when I sentence you.

19 THE DEFENDANT: Yes.

20 THE COURT: But you're a grown man; you're a smart
21 man. I've read a lot about you, right? You are not -- I'm
22 telling you, I don't define you only by what transpired
23 here. But this did transpire and you know as a parent that
24 actions have consequences, you know that. I know that. And
25 there has to be some sequences for this conduct because the

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1 man that your family describes is certainly a man that could
2 understand that. The man that your family knows, knows that
3 I can't abide by this. They wouldn't abide by this. And if
4 you were sitting in my shoes, the man who your family
5 describes, you, sir, too, would not abide by this we just
6 can't. A man lost his life and you made choices and
7 participated in conduct that led to it.

8 Go ahead.

9 MR. BIALE: And so, your Honor, we're not
10 disputing any of that. I simply wanted to explain that the
11 request for the sentence that we're making should not be
12 construed as minimizing any of the conduct that took place.
13 But I think and I agree with the Government that here the
14 important sentencing factors include just punishment or
15 sometimes called retribution and deterrence, specific
16 deterrence. And what we usually think of as accomplishing
17 those goals is some suffering that we impose on the
18 defendant to, in some way, it can never fully balance out,
19 obviously, the harm that is caused in a case like this. But
20 we think that we can impose a certain amount of time that
21 will effect a certain amount of suffering on the part of the
22 defendant that they won't do it again and that it will be a
23 just punishment.

24 And I think that what Mr. Goulbourne has endured
25 here, we're not simply asking for a discount because of the

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1 MDC conditions. I think that what he has endured has
2 accomplished, to a substantial degree, you and I may
3 disagree on if it's gone all the way or if a little more
4 time is needed. But I think to a substantial degree, the
5 suffering that he has endured at the MDC has accomplished
6 those goals of sentencing because of how bad it's been. I
7 do want to say and, again, I'm not trying to minimize or
8 quibble with any of the discussion about Mr. Goulbourne's
9 participation, he's not disputing that. You will hear from
10 him his feelings about his participation in that conduct.

11 I do object to the reference to other charges that
12 were brought against Mr. Goulbourne in this case. Because
13 while the Government may have believed that there was
14 probable cause at the time of the superseding indictment to
15 bring those charges, the Government did ultimately make a
16 decision to offer Mr. Goulbourne a plea to one count of
17 obstruction of justice.

18 And I disagree with the Government that the
19 guidelines for that count do not incorporate the underlying
20 conduct because the way that the guidelines are structured
21 as your Honor described is through a cross reference to the
22 underlying conduct. 30 is the highest possible guidelines
23 range for an obstruction offense. And when the defendant
24 accepted responsibility, Mr. Goulbourne is at the highest
25 possible total offense level that a defendant can be having

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1 been convicted of that offense, okay?

2 So I understand that the guidelines here are
3 capped by the nature of the charge, but the Government made
4 the choice to offer Mr. Goulbourne a plea with that cap.

5 Now, part of the context of that, and I don't want
6 to get into a whole discussion of the plea negotiations, but
7 I will just note part of the context --

8 THE COURT: Right because I can't intrude on plea
9 negotiations.

10 MR. BIALE: And I'm not asking you to. I just
11 want to remind the Court that some of what was happening at
12 the time leading up to Mr. Goulbourne's plea was the motion
13 that Mr. Goulbourne made regarding some of the warrants in
14 this case, the arrest warrant, and some of the
15 misrepresentations that were made to the magistrate judges
16 who approved those warrants by Task Force
17 Officer Livingston, okay, which involved misidentifying a
18 different member of the crew, or the group, whatever you
19 want to call it, as Mr. Goulbourne.

20 That motion -- and your Honor granted an
21 evidentiary hearing on it -- that motion, I believe, could
22 have seriously compromised the Government's case. And
23 Mr. Goulbourne elected, rather than go forward with the
24 hearing, to accept the plea offer that the Government made
25 to him. And that's significant I think for a variety of

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1 reasons. But one is because I think it represents an
2 important break between Mr. Goulbourne and the other
3 individuals in this case. He could have pursued that motion
4 to see what sort of damage that it did to the Government's
5 case. But, ultimately, he decided to plead guilty and to
6 allow the Government's case against other individuals to
7 proceed.

8 I want to turn a little bit to sort of what
9 Mr. Goulbourne's plan is going forward because, at some
10 point, obviously, he is going to get out of prison. He has,
11 I would hope, a lot of time left ahead of him to make amends
12 and get things right. And I think he has a plan for that.
13 He has a very supportive family as your Honor indicated.
14 Some of the bad influences that have been around him in the
15 past are no longer around him. And I think it's fair to say
16 they will likely be -- they will likely not be on the
17 streets for a significant period of time.

18 Mr. Goulbourne is someone who has always dedicated
19 himself to work and gainful employment. He has an offer
20 from the individual he worked with on the film shoots to
21 return to that work when he comes out of prison. He will
22 continue to make music, which is really his passion, and,
23 you know, is really, in a lot of ways, the way in which he
24 sort of communicates his enthusiasm and love for the world.
25 And he and I have talked a lot about his music career and

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1 about music in general. And one of the things which he's
2 told me has been a very significant thing for him is that on
3 Sunday nights he's been able to hear in the MDC a reggae
4 program that plays some of his music. And that has allowed
5 him, even in that place where it's understandable that
6 someone would feel only despair, that has allowed him to
7 recognize that he has a life outside of the MDC, outside of
8 this case; that he has productive pursuits and passion that
9 is he loves that he wants to return to.

10 And then finally, your Honor, I'll say that I
11 think Mr. Goulbourne is someone who, in the past, has done
12 well on supervision. I think that, I mean, in some ways, if
13 it were possible for us to ask for a longer period of
14 supervision than three years, I might be asking for that in
15 this case because I know that the resources in the probation
16 department and this court will be immensely helpful to
17 Mr. Goulbourne as he transitions back to society.

18 Three years is the maximum supervised release
19 sentence, but I think that Mr. Goulbourne is prepared to
20 succeed on supervised release and to return to the
21 productive pursuits that he has focused on for much of his
22 life since his adolescence.

23 Unless the Court has any questions.

24 THE COURT: I think the Government may want to
25 respond.

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1 MS. MCGRATH: Your Honor, very briefly.

2 So defense counsel notes that the Court, of
3 course, is not asking the Court to consider the plea
4 negotiations but in effect he is. He's suggesting that the
5 circumstances surrounding the timing for the plea are
6 indicative of some flaw in the government's case and we
7 fundamentally disagree with that. Of course, your Honor has
8 no understanding of who approached who or why.

9 I'll just correct a few factual points.

10 So your Honor had ordered -- defense counsel had
11 requested a Franks hearing. Your Honor had ordered a
12 pre-Franks hearing to determine if that standard had even
13 been met. The defendant ultimately pled before the events
14 that later transpired. But several other defendants,
15 raising similar alleged misstatements, proceeded further and
16 the Government asked the Court to assume that the statements
17 were made with the requisite intent which, of course, we
18 fundamentally disagree that they were. And your Honor found
19 that they were immaterial.

20 And so, any suggestion that had the defendant not
21 pled and we had gone forward, we wouldn't be able to prove
22 the underlying charges is something we fundamentally
23 disagree with.

24 And just looking at the Government's description
25 of the events, which defendant does not dispute, it's easy

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1 to see how they form the underlying charges in this case.

2 The defendant agreed that he held a gun to someone
3 while his co-defendant robbed him. And it's easy to see how
4 that would amount to Hobbs Act Robbery, a drug trafficking
5 conspiracy, and a §924(c) involving brandishing. And so, of
6 course, we did not ultimately convict the defendant of any
7 of those counts, but instead, we're going the Court to
8 consider the facts, undisputed, underlying those.

9 And so, also unless the Court has other questions
10 for the Government, those were the only points to which we
11 wanted to reply.

12 THE COURT: Can I hear from Mr. Goulbourne? You
13 can switch seats with him so he can stand up.

14 THE DEFENDANT: Good afternoon, your Honor.

15 THE COURT: Good afternoon, sir.

16 THE DEFENDANT: I would like first to say I am
17 sorry to the family of Mr. Baratta. I know what it's like
18 it lose a member of a family, it's like losing a part of
19 yourself. Nothing I can say will bring him back or heal the
20 hurt that you are feeling. I just want to say to you how
21 sorry I am. Also, I want to apologize to the victims of the
22 other three robberies. I am very sorry for the pain and
23 fear that I have caused by my actions.

24 I would like to apologize to my children and my
25 family because of my poor decisions that I've made. I was

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1 not able to be there for you these past 28 months and I hope
2 to be reunited with you one day again.

3 Your Honor, I don't want to make any excuse for
4 my -- for what I did. I take full responsibility for
5 deleting my text messages. Knowing my actions were wrong
6 and I've been thinking about it night and day. And it makes
7 me sad, it really makes me sad. I thought about my choice
8 that night. I felt a pain in my stomach from my panic. I
9 thought I was going to die that night. I though I would
10 never see my children again. My bunky prayed for me with
11 Psalm 23 and Psalm 91 and saying you're not going to die.
12 And I kept telling him this feeling like death is upon me.
13 I am lucky that I didn't die that night, that I wanted to
14 dedicate the rest of my time that I have on this earth to
15 make better choices, make a positive impact on my children
16 and family and the community.

17 This is my plan moving forward whether bond or
18 free. So I respect whatever decision you make. But I do
19 ask that you consider my kids, especially my youngest one,
20 who needs their father. When I came to MDC, one of my
21 twins, which was born on Valentine's Day, was only three
22 years at the time. I was talking to her on the phone and
23 she couldn't speak that much yet but a spirit moved her and
24 she said, Daddy, where are you? Ever since I heard that,
25 things have been different for me. I hear that when I go to

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1 sleep. I get nightmares. Wake up in cold sweats. This
2 bothers me, it's terrifying to me that they knows I am the
3 one that take care of them, grow them, do everything with
4 them. Everything. Their mothers is not that capable of
5 those certain things.

6 I'm asking you for mercy not for me but for my
7 kids so I can be there for them and grow them well and teach
8 them positive things. And, your Honor, I would never return
9 to these dark moments again in life.

10 THE COURT: Thank you, sir.

11 Does anyone have anything else before I take a
12 brief adjournment?

13 MS. MCGRATH: No, your Honor.

14 COURTROOM DEPUTY: All rise.

15 (Defendant exits from the courtroom.)

16 (A recess in the proceedings was taken.)

17 (Defendant enters the courtroom.)

18 COURTROOM DEPUTY: All rise.

19 THE COURT: You can be seated.

20 Before we proceed, Mr. Biale, I want to give you
21 an opportunity to address the departure issue which was not
22 the subject of discussion as the Government did not indicate
23 that it was seeking to pursue the departure based on
24 5X2.2(1) I believe it is. And you indicated and -- or
25 5K2.2(1). And you indicated that you objected to the

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1 probation department's estimation that a departure, an
2 upward departure, might be warranted in this case pursuant
3 to 5K2.2(1) based on the argument that this charge already
4 considers in the guideline range the Hobbs Act robberies,
5 the §924(c) charges. And I'm trying to figure out in my
6 mind if I agree with you on that and I have to tell you that
7 as I sit here now I don't because it appears to the Court
8 that the only charge that was taken into account in this
9 obstruction charge, in the determination of the guideline,
10 was the murder.

11 And indeed, when I even went back and looked to
12 the plea agreement that you all entered to, the only
13 reference that was referred to in the base offense level,
14 and there be other reasons for this, but was the cross
15 reference to the murder. And I am struggling -- which would
16 get you at a base offense level of 30. So I am struggling
17 to understand how the Court can conclude that the other
18 conduct that was originally charged, and for whatever
19 reason, how the Government ultimately arrived at its
20 charging decision and how you decided to proceed, 5K2.2(1)
21 does allow the Court to depart upward to reflect the actual
22 seriousness of the offense based on conduct, one, underlying
23 a charge dismissed as part of a plea agreement in a case or
24 underlying a potential charge not pursued in the case as
25 part of a plea agreement.

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1 So any plea agreement was against the backdrop of
2 the existence of 5K2.2(1). That was a big wind up but I am
3 interested to hear from you.

4 MR. BIALE: Understood, your Honor.

5 So a couple of things. One is that while it's
6 correct that the plea agreement contemplated as the
7 underlying charge the third robbery which included the
8 murder. As part of the plea agreement, there was an
9 agreement that Mr. Goulbourne would not dispute his
10 participation in the other robbery. So I don't think that
11 determines the 5K2.

12 THE COURT: Which would allow the Court then to
13 feel more perhaps comfort.

14 MR. BIALE: No, I want just for the Court to
15 understand that that was baked into the plea agreement, I
16 think, through that stipulation.

17 THE COURT: Right. But that doesn't make
18 it -- hold on.

19 Baked into your plea agreement, meaning, that the
20 Government said, look, you don't get to, you know, deny your
21 involvement in those robberies, is very different than baked
22 into the guideline range that is ultimately arrived at from
23 the plea agreement. Those are very different concepts and I
24 am only addressing the latter.

25 MR. BIALE: Understood. So let me now address

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1 that. So maybe that was my wind up.

2 I think to answer the Court's question about what
3 the guidelines would be if you calculated it for all of the
4 charges that are involved in the case, you would have to go
5 to --

6 THE COURT: Well, that wasn't my question.
7 Because I understand there maybe a grouping analysis and
8 then there's a question about the points, et cetera. I
9 understand that. I'm talking specifically about the fact
10 that the sentencing guidelines allows the Court to take into
11 account the dismissed charges to reflect, quote, "the
12 seriousness of the crime." I'm not talking about whether
13 the guidelines range has been properly calculated, we all
14 know it's been properly calculated. But the guidelines
15 contemplate certain instances where the guidelines range
16 doesn't adequately reflect the seriousness of the charges
17 and allows for a departure upward.

18 And your argument, as I understood it before the
19 break, was that you did believe that it was -- as to point
20 two or subpart 2 of 5K2.2(1) that you had believed that
21 those other charges did factor into the determination, and I
22 was trying to understand your basis for saying that because
23 it didn't appear to be the case for me.

24 MR. BIALE: Understood.

25 And just to clarify, yes. So I think that I'm

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1 relying on that part 2 of 5K2.2 (1) which is that it's
2 charges that did not enter into the determination of the
3 applicable guidelines range.

4 What I'm saying is, here, even if you had that
5 grouping analysis, and I don't know if that would result in
6 a higher guidelines range, we are already at the maximum
7 guidelines range that is possible for the obstruction
8 counts.

9 THE COURT: So for that reason and others, these
10 other charges, and there are numerous other charges, there
11 is Count One, the Hobbs Act Robbery conspiracy; Count Two,
12 the conspiracy to distribute and possess with the intent to
13 distribute; Count Three, the Hobbs Act Robbery; Count Four,
14 the possession with the intent to distribute; Count Five,
15 the possessing and brandishing of a firearm; Count Six,
16 Hobbs Act Robbery; Count Seven, possession with intent to
17 distribute; And Count Nine, Hobbs Act Robbery; Count Ten,
18 possession with the intent to distribute; Count Eleven
19 possessing, brandishing, and discharging a firearm.

20 MR. BIALE: So, your Honor, many of those counts,
21 including Counts One and Two and Count Eleven that you just
22 referenced are different ways of charging the same
23 conduct --

24 THE COURT: I understand.

25 MR. BIALE: -- in the December 3rd robbery. So I

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1 think we're only talking about --

2 THE COURT: Fair enough.

3 MR. BIALE: So what I am saying, and I understand
4 the Court's position, what I am saying is that I don't think
5 that if you -- if a grouping -- even just assuming a
6 grouping analysis on those other robberies were to increase
7 the guidelines level, I think that they're already taken
8 into account by the most serious conduct being factored into
9 the obstruction count. And using that conduct to bring you
10 up to the highest guidelines range possible under 2J1.2. So
11 it wouldn't make a difference is what I'm saying from a
12 guidelines perspective.

13 THE COURT: But this provision is about not kind
14 of the technical calculation of the guideline, but the
15 question of whether the guideline that is technically
16 calculated, right, reflects the seriousness of the offense.
17 This is a different inquiry. It might be next to the
18 guidelines calculation, but it's a different inquiry and it
19 asks the Court to answer a different question.

20 MR. BIALE: I understand, your Honor's point. I
21 think I'm going to rest on my argument as it stands. I
22 think that whether it's, as a departure, a variance which is
23 what the Government is urging. We are talking about sort of
24 the same question, the same §3553(a) factors which is how do
25 you balance the seriousness of the offense which we concede

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1 with Mr. Goulbourne's history and characteristics and what
2 he's had to deal with at the MDC. So I don't know that -- I
3 understand the Court's point. I don't think that it makes
4 so much a difference whether you treated it as a departure
5 or a variance.

6 THE COURT: It doesn't. But it's the same
7 question, it's the same issue, as to whether in this case a
8 guidelines range of 78 to 87 months reflects the seriousness
9 of the crimes to which Mr. Goulbourne engaged in. I mean,
10 that's ultimately the question. And, you know, the
11 Government's argument is they don't care whether I call it a
12 variance or a departure, the answer to that question from
13 the Government's perspective is, no, it doesn't. And, you
14 know, even in the way that Mr. Goulbourne talked about what
15 he did and his regrets. The regret was -- first, let me
16 take a step back.

17 First, he apologized to the victim of the crime so
18 I don't want to take that from you. So forgive me because I
19 need to make sure that I adequately capture what it is that
20 you said to this court. So I don't want to minimize what
21 you said.

22 But there seems to be this focus on this
23 obstruction. But the obstruction is, you know, as I had
24 said earlier, was the culmination of a lot of conduct as
25 opposed to the conduct, really, that is the most concerning

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1 to the Court.

2 I recently sentenced someone as an accessory
3 after-the-fact to a murder. I sentenced them to 60 months.
4 And I sentenced them to 60 months in part because their role
5 was only after the fact. They took no part whatsoever in
6 anything that led up to the murder including its planning or
7 its participation in the pattern of conduct which we have
8 here, a pattern of conduct, that led to what I believe was
9 an inevitability: Someone was going to be killed. And it
10 could have been Mr. Goulbourne, it could have been his
11 brother, it could have been one of the victims. But this
12 conduct was going to lead to someone's death.

13 In the case that I recently sentenced, that
14 individual didn't participate in that. It was only after
15 the fact that Mr. Goulbourne sits differently than that
16 individual who was charged with a similar crime or the same
17 crime.

18 MR. BIALE: And I don't know the circumstances of
19 that murder so I can't speak to that. I mean, this is, you
20 know, I know that your Honor dealt with questions of felony
21 murder, intentional murder, when you sentenced Mr. Webber
22 and that's come up with the other defendants in the case and
23 that's not really our hill to die on.

24 THE COURT: No, I know.

25 MR. BIALE: But I do want to say that I think with

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1 respect to the Mr. Goulbourne's acceptance of
2 responsibility, and I understand there was an aspect of what
3 he said which may be. And, you know, I worked with him on
4 the statement, they're his feelings and his words, but we
5 worked on it together.

6 THE COURT: I think I diminished what he said so
7 don't take what I said --

8 MR. BIALE: I just want to be clear that one of
9 the things that Mr. Goulbourne absolutely wanted to express,
10 and I think did express, is his feelings about his
11 participation in all of the underlying conduct.

12 THE COURT: He did because he apologized for that.
13 And I think that when I -- that was an error on my part, so
14 I want to be clear. I heard what you said and I think my
15 last statement really undermined the kind of the thrust of
16 the statement that you made to me so I apologize for that.

17 MR. BIALE: Okay. So I think we all understand
18 each other on that front. So, I think, I'm not sure I have
19 more to say, your Honor.

20 THE COURT: Yes.

21 MR. BIALE: You have the argument. Sorry, one
22 moment.

23 (A brief pause in the proceedings was held.)

24 MR. BIALE: Your Honor, just for the record, I was
25 just clarifying to Mr. Goulbourne that your Honor's comments

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1 do not suggest that you believe he went into the house or
2 discharged the firearm but, rather, it's about the course of
3 conduct and what was foreseeable to him.

4 THE COURT: Yes. If that's how you explained it
5 to Mr. Goulbourne, your explanation is absolutely correct.
6 I know that you didn't go into that house. But I do hold
7 you responsible, Mr. Goulbourne, for participating in a
8 pattern of conduct with other individuals and one that also
9 started with, in the first instance, where you held a gun to
10 an individual's head and participated in the robbery, or not
11 to their head, but at them, forgive me. You held a gun at
12 them.

13 There were just so many opportunities where you
14 had the ability to say, I'm not going to do this again.
15 This is not one occasion, this the not two occasions, this
16 is three occasions that I'm aware of where you or
17 individuals with whom you associated with brought guns into
18 a situation to be able to rob from individuals. And, again,
19 I believe that the outcome here was inevitably that someone
20 would be hurt or killed.

21 Did the Government want to respond to any of this?

22 MS. MCGRATH: Unless your Honor has questions for
23 us, no.

24 THE COURT: All right. This is probably one of
25 the -- I feel like I say this every time I get on the bench

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1 to do a sentencing but it is a difficult sentencing. And
2 I've never, ever been faced, by the way, with a gulf as
3 large as this in terms of where the Government is asking the
4 Court to fall and where the defense is asking the Court to
5 fall.

6 I believe that the Court must take into
7 consideration the conditions of confinement that
8 Mr. Goulbourne was subjected to at MDC. However, I disagree
9 with you, Mr. Biale, that a time-served sentence even
10 approaches something that balances the Court's need to
11 afford Mr. Goulbourne some consideration for that which he
12 is due.

13 Also, with my apology, right, I'm not part of the
14 Executive Branch; I don't run the MDC, but I want to
15 apologize to you because you should not have had to endure
16 that. It was wrong and I can account for it, but I cannot
17 account for it in the way that Mr. Biale has asked me to. I
18 have to balance these things out, and I when I balance it
19 out, I can't get there. And I'm going to be honest with
20 you, I can't get close to there.

21 I have kind of spoken about my views on the
22 conduct here a number of times, and so, I don't think I need
23 to belabor that. The question is: Where do I arrive at
24 with the proper balancing of the circumstances and,
25 ultimately, taking into consideration all of the competing

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1 considerations that I must under §3553(a) which, in a case
2 like this, where someone lost their life, chief among them
3 is the seriousness of the crime as well as the need to
4 afford adequate deterrence to criminal conduct.

5 Give me a second.

6 In my estimation, a variance below the guidelines
7 in this case is not warranted, and indeed, I believe that
8 the appropriate starting point for this court would be at a
9 guideline range that reflects a departure upward based on
10 all of the facts and circumstances in this case and the
11 uncharged conduct.

12 That said, the Court must take into consideration
13 the conditions of confinement, and ultimately, I fall at a
14 guideline range, at the original guideline sentence of
15 80 months in custody.

16 Mr. Goulbourne, I know that's not the sentence
17 that you had hoped for but what you said to me in your
18 statement was that you had plans for yourself no matter how
19 the Court sentenced you and I respect that mightily. And I
20 hope that you meant that for your sake, not for mine,
21 because I do believe that you have much to offer to your
22 friends, your family, and your community. We just have to
23 get this done first, okay?

24 I believe that the Court's sentence is sufficient
25 but not greater than necessary to comply with the purposes

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1 of sentencing. I must also consider whether to impose
2 supervised release.

3 I will quickly identify the factors that the Court
4 considers which is the nature and the circumstances of the
5 offense, the history and characteristics of the defendant,
6 the need to afford adequate deterrence to criminal conduct,
7 the need to protect the public from further crimes, the need
8 to provide the defendant with needed educational or
9 vocational training, medical care, and correctional
10 treatment. The need to avoid unwarranted sentence
11 disparities among defendants with similar records found
12 guilty of similar conduct. The need to provide restitution
13 to any victims. The kinds of sentences and sentencing range
14 established for the offense and pertinent policy statements.

15 Now, Mr. Biale, in your submission, you had
16 encouraged the Court and here today a high end of the
17 guidelines range for supervised release. I know that
18 recommendation was made against the backdrop of your other
19 recommendation which was a significantly lower custodial
20 period. So I want to hear from you as to what you believe
21 is appropriate here. I will say that I am a firm believer
22 in how supervised release can help the defendants that
23 appear before me because of the resources that we have
24 available to them, not as a means of punishment but as a
25 means of assistance, but I am happy to hear from you.

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1 MR. BIALE: So, your Honor, I think generally, I'm
2 going to defer to the Court on this. I do think that given
3 the additional time that Mr. Goulbourne is going to spend
4 incarcerated that some reduction in the supervised release
5 period would be appropriate in fashioning a sentence overall
6 that comports with the §3553(a) factors, so I would ask that
7 you impose a sentence of two years of supervised release on
8 top of the incarceration.

9 THE COURT. Anything from the Government.

10 MS. MCGRATH: We take no position on that, your
11 Honor.

12 THE COURT: I tend to agree that a two-year period
13 of supervised release is appropriate and I am also going to
14 suggest and recommend that when Mr. Goulbourne is released
15 that to the extent the Ray's Court is still operating, if he
16 is eligible that an invitation be extended to join our
17 Ray's Court. Our Ray's Court is for gentlemen who have been
18 released from custody. And during their first year of
19 supervised release, they come and they meet with me and
20 other individuals in this court.

21 And it's a reentry court and it is designed to
22 assist you in transitioning back into society in a
23 meaningful way, right? We have resources, including legal
24 counsel that are available to you. I am there to encourage
25 you and hold you accountable, both of those things. And

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1 when you successfully complete our Ray's Court and graduated
2 out of our Ray's Court it does give you an opportunity to
3 reduce the amount of time that you have on supervised
4 release. And I believe that you would be a good candidate
5 for this program. And I believe that you would be
6 successful and you would give me an opportunity to award you
7 with a -- for that success with reducing your period of
8 supervised release.

9 So it is a voluntary program, you have to be
10 eligible for it, but I do hope that if given the
11 opportunity, that you take advantage of that opportunity and
12 you join me in Ray's Court. We got to do this first.

13 THE DEFENDANT: Right.

14 THE COURT: Which you can do, right? And then
15 we're going to go on. And all of those things that you have
16 planned for yourself, you're going to be able to accomplish.
17 I have no doubt.

18 I need to now take about the terms and conditions
19 of your release.

20 If you violate any of the conditions of your
21 supervised release, I may sentence you to up to two years in
22 prison without credit for your pre-release imprisonment or
23 time previously served on post-release supervision.

24 Now, during your period of supervised release, you
25 must abide by the following mandatory conditions of

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1 supervised release.

2 You must not commit another federal state or local
3 crime. You must not unlawfully possess a controlled
4 substance. And you must refrain from any unlawful use of a
5 controlled substance.

6 But the probation department doesn't believe that
7 the testing provision is necessary, correct?

8 MS. MALKO: Correct, your Honor.

9 THE COURT: You must cooperate -- so he's accused
10 excused from that.

11 You must also cooperate in the collection of DNA
12 as directed by the probation officer.

13 In addition, you must abide by the following
14 standard conditions of release.

15 Sir, you shall report to the probation office in
16 the federal judicial district where you were authorized to
17 reside within 72 hours of release from imprisonment unless
18 the probation officer instructs you to report to a different
19 probation office or within a different timeframe.

20 After initially reporting to the probation office,
21 you will receive instructions from the Court or the
22 probation officer about how and when to report to the
23 probation officer and you shall report as instructed.

24 You shall not knowingly leave the federal judicial
25 district where you were authorized to reside without first

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1 getting permission from the Court or the probation officer.

2 You shall answer truthfully the questions asked of
3 you by the probation officer.

4 You shall live in a place approved by the
5 probation officer. And if your plans change with respect to
6 where you live or anything about your living arrangements,
7 including the people you live with, you shall notify the
8 probation officer at least ten days before the change. If
9 notifying the probation officer at least ten days in advance
10 is not possible, due to unanticipated circumstances, you
11 shall notify the probation officer within 72 hours of
12 becoming aware of the change or expected change.

13 You shall allow the probation officer to visit you
14 at any time at your home or elsewhere and you shall permit
15 the probation officer to take any items prohibited by the
16 conditions of your supervision that the probation officer
17 observes in plain view.

18 You shall work full-time, that is, at least 30
19 hours per week at lawful type of employment unless the
20 probation officer excuses you from doing so. If you do not
21 have full-time employment you shall try and find full-time
22 employment unless the probation officer excuses you from
23 doing so.

24 If your plans change with respect to where you
25 work or anything about your work including your job position

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1 or responsibilities, you shall notify the probation officer
2 at least ten days before the change. If notifying the
3 probation officer in advance is not possible due to
4 unanticipated circumstances, you shall notify the probation
5 officer within 72 hours of becoming aware of the change or
6 expected change.

7 You shall not communicate or interact with someone
8 you know who is engaged in criminal activity. If you know
9 someone who has been convicted of a felony, you shall not
10 knowingly communicate or interact with that person without
11 first getting permission of your probation officer. If you
12 are arrested or questioned by a law enforcement officer, you
13 shall not notify the probation officer within 72 hours.

14 You shall not own, possess, or have access to a
15 firearm, ammunition, destructive device or dangerous weapon.
16 That's anything that was designed or modified for the
17 specific purpose of causing bodily injury or death to
18 another person like a Taser.

19 You shall not act or make any agreement with a law
20 enforcement agency to act as a confidential human source or
21 informant without first getting permission of the Court.
22 And if the probation officer determines based on your
23 criminal record, personal history and characteristics as
24 well as the nature and circumstances of your offense, that
25 you pose a risk to another person, the probation officer,

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1 with prior approval of the Court, may require you to notify
2 the person about the risk and you must comply with that
3 instruction. The probation officer may contact the person
4 and confirm that you have notified the person about the
5 risk.

6 You shall follow the instructions of the probation
7 officer related to the conditions of your supervision.

8 The Court circulated to the parties the special
9 conditions of supervised release. Did you have an
10 opportunity to review that?

11 Has it been executed?

12 MS. MCGRATH: Apologies, your Honor, no. If there
13 is no objection from the defendant we can do that.

14 MR. BIALE: No objection.

15 THE COURT: All right.

16 (A brief pause in the proceedings was held.)

17 THE COURT: The document entitled "Special
18 Conditions of Supervised Release or Probation" has been
19 marked as Court Exhibit 1 and it's been executed by
20 Mr. Goulbourne, Mr. Biale, and the Government.

21 Now, my question is whether the parties waive the
22 reading of this special conditions for the record.

23 MS. MCGRATH: The Government does.

24 MR. BIALE: Yes, Your Honor.

25 THE COURT: All right. Mr. Biale, are the reasons

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1 for the Court's imposition of this condition apparent to you
2 on the face of the condition?

3 MR. BIALE: Yes, Your Honor.

4 THE COURT: The Court so orders the special
5 condition as set forth in Court Exhibit No. 1.

6 I must order that Mr. Goulbourne to pay a special
7 assessment in the amount of \$100. However, I decline to
8 impose a fine as it does not appear as if Mr. Goulbourne has
9 the ability to pay one.

10 Mr. Goulbourne, I want to apprise you that you
11 have a statutory right to appeal your sentence under certain
12 circumstances, particularly, if you believe that your
13 sentence is contrary to law. However, I will note for you
14 that as part of your agreement with the Government, you
15 agreed not to appeal your sentence if the sentence was set
16 at 135 months or below in custody which, of course, the
17 Court did today.

18 Any notice of appeal must be filed within 14 days
19 of the entry of judgment or within 14 days of the filing of
20 a notice of appeal by the Government. If requested, the
21 clerk will prepare and file a notice of appeal on your
22 behalf. And if you cannot afford to pay the cost of an
23 appeal, or for appellate counsel, you have the right to
24 apply for leave to appeal in forma pauperis which means you
25 can apply to have the Court waive the filing fee. And on

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1 appeal, sir, you may also for court-appointed counsel.

2 Would you like the Court to make a recommendation
3 with respect to a facility?

4 MR. BIALE: Yes, Your Honor. Recommendation for a
5 facility close to New York City.

6 THE COURT: I'll recommend that he be housed in a
7 facility as close to the New York City-Metropolitan area as
8 possible.

9 Does the Government wish to make a motion at this
10 time?

11 MS. MCGRATH: Your Honor, we just note that the
12 plea agreement does contemplate forfeiture but we understand
13 it will be done administratively so we don't require an
14 order.

15 And we'd also like to move to dismiss open counts
16 in the superseding indictment, those are Counts One through
17 Seven and Nine through Eleven as to the defendant and then
18 all underlying counts in the indictment.

19 THE COURT: Okay. In superseding indictment,
20 Counts One through Seven and Nine through Eleven as to
21 Jonathan Goulbourne are dismissed as well as all the counts
22 in the underlying indictment.

23 MS. MCGRATH: Thank you, your Honor.

24 THE COURT: Again, I do wish you luck,
25 Mr. Goulbourne.

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1 And to your son, I know that your father
2 appreciated you being here today and he'll appreciate your
3 support throughout his custodial period. And the work will
4 begin as well, though, when he's released you understand and
5 you will be there to help him and support him, yes.

6 JAMARI GOULBOURNE: Yes.

7 MR. BIALE: I have one request, your Honor. I
8 spoke with the marshals about whether Mr. Goulbourne and his
9 son could spend a little time talking. They said if you
10 direct that that happened they can make it happen.

11 THE COURT: Absolutely.

12 MR. BIALE: I request that you do that.

13 THE COURT: Yes.

14 How do you all want to do that? Just here in this
15 courtroom for a few minutes.

16 THE MARSHAL: Could you give me a second, your
17 Honor.

18 THE COURT: Sure.

19 (A brief pause in the proceedings was held.)

20 THE MARSHAL: Yes, Your Honor.

21 THE COURT: So how do you want it to happen.

22 THE MARSHAL: We can have him seated at the far
23 end and have the family member come to the first row.

24 THE COURT: Okay. What's your name?

25 JAMARI GOULBOURNE: Jamari.

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1 THE COURT: Jamari, come and sit in this first row
2 here. Thank you. And then you don't need us to allow them
3 to speak. So I'm going to excuse myself so that they can
4 excuse themselves so they can have an opportunity to speak
5 without us listening.

6 All right. Good luck to you, sir.

7 COURTROOM DEPUTY: All rise.

8 (Defendant exits from courtroom at 2:17 p.m.)

9 (WHEREUPON, this matter was concluded.)

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CERTIFICATE OF REPORTER

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15 I certify that the foregoing is a correct transcript of the

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Anthony D. Frisolone

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Anthony D. Frisolone, FAPR, RDR, CRR, CRI
Official Court Reporter

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